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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,126

10/31/2003

Richard Mazurek

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8461

7590

06/27/2006

James C. Wray
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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,126

Applicant(s)

MAZUREK, RICHARD

Examiner

Gary E. Elkins

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3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-10, 12, 13 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 18, lines 6 and 7, “the outer and inner halves of the end panels” lacks antecedent basis in the claim.

In claim 18, last two lines, “outer halves of the end panels” and “inner halves of the end panels” are each a double inclusion of an element insofar as the elements were previously set forth in the claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12, 13 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langston, Jr. et al (fig. 11 emb) in view of any one of Lombardi et al, Miller, Reber or Houghland. Langston, Jr. et al discloses a double walled tray including a stiffening sheet 414 with sides and ends 416 which is secured between folded over portions (38, 46, 70, 72 portions of the side walls and ends walls of a tray forming sheet. With respect to method claims 18-21, the formation steps are considered the inherent and necessary steps involved in forming the tray

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disclosed in Langston, Jr. et al. Langston, Jr. et al does not disclose formation of gussets between the side and end panels (Langston, Jr. et al discloses flaps 74, 76, 78, 80 between the side and end panels) and, with respect to claim 16, does not disclose formation of the tray with a square shape. Each of Lombardi et al, Miller, Reber and Houghland teaches that it is known to connect double ply side and end panels of a box using gussets. It would have been obvious to substitute gussets for the folded flaps in Langston, Jr. et al as taught by any one of Lombardi et al, Miller, Reber or Houghland since gussets provide a better seal at the corners and better alignment of the corners during folding. Both folded flaps and gussets are well known in this art as connections between side and end panels. With respect to claim 16, it would have been obvious to size and proportion the tray of Langston, Jr. et al such that the box is square as a change in the size and shape of the box. Sizing and proportioning boxes to hold a known size and shape of content is within the level of skill in this art and the selection of a square shape for the box in Langston, Jr. et al would have been prima facie obvious to one of ordinary skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955), Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984), In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459.

4. Claims 1-3 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langston, Jr et al (fig. 11 emb) in view of any one of Laido, Wolf or Bauer et al, and any one of Lombardi et al, Miller, Reber or Houghland. Langston, Jr. et al discloses all structure of the claimed box and all steps of the claimed method except formation of both a base box and cover as double walled trays, formation of gussets between the side and end panels (Langston, Jr. et al discloses flaps 74, 76, 78, 80 between the side and end panels) and, with respect to claim 6,

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formation of the box with a square shape. Each of Laido, Wolf and Bauer et al teaches that it is known to make a double walled base box with a separate similarly formed double walled telescoping cover. Each of Lombardi et al, Miller, Reber and Houghland teaches that it is known to connect double ply side and end panels of a box using gussets. It would have been obvious to substitute a separate cover for the integral cover of Langston, Jr. et al as taught by any one of Laido, Wolf or Bauer et al since a separate double walled telescoping cover provides a stronger overall box and simpler formation of each tray piece. Separate telescoping covers on trays are well known in this art. It would have been obvious to substitute gussets for the folded flaps in Langston, Jr. et al as taught by any one of Lombardi et al, Miller, Reber or Houghland since gussets provide a better seal at the corners and better alignment of the corners during folding. Both folded flaps and gussets are well known in this art as connections between side and end panels. With respect to claim 6, it would further have been obvious to size and proportion the tray of Langston, Jr. et al such that the box is square as a change in the size and shape of the box. Sizing and proportioning boxes to hold a known size and shape of content is within the level of skill in this art and the selection of a square shape for the box in Langston, Jr. et al would have been prima facie obvious to one of ordinary skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955), Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984), In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459.

Allowable Subject Matter

5. Claims 4, 5, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

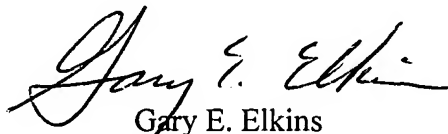
Response to Arguments

6. Applicant's arguments with respect to claims 1-3, 6-10, 12, 13 and 16-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Gary E. Elkins
Primary Examiner
Art Unit 3727